

**Legal Ethics in Poland.  
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**Part I.**  
**Foundations**



# Chapter 1. Ethics and legal ethics

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Ethics (understood in a simplified manner as a general theory of morality) is one of the five main branches of philosophy, the others being ontology (general theory of being), epistemology (general theory of knowledge), logic (general theory of correct reasoning and justification of theorems) and aesthetics (general theory of beauty, or more broadly, general theory of sensory cognition). In turn, legal ethics, at least in the approach proposed here, covers that part of jurisprudence which, after all, falls within the general reflection on law, and therefore in theoretical and legal sciences – next to the methodology of legal sciences, sociology of law, theory of law, and ethics of law. In this sense, a general reflection on law can be described as a philosophy of law in *sensu largissimo*. Since philosophy of law is, in a sense, part of general philosophy, we are dealing with a kind of feedback and closing this methodological circle – in order to understand the essence of legal ethics we need to be acquainted with both knowledge of jurisprudence and general philosophy.<sup>1</sup>

At the same time, ethics is sometimes a contextually ambiguous concept and a field so broad<sup>2</sup> and with such a rich and long history<sup>3</sup> that even its synthetic presentation would exceed the scope of this study. Therefore, this discussion should be limited only to basic information essential from the point of view of legal ethics, the more so because detailed information on various kinds of ethics (including normative ethics, descriptive ethics, applied ethics, situational and multi-dimensional ethics) is given in the following chapters.

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<sup>1</sup> The model of preceding information on the ethics of individual legal professions with some general knowledge of ethics is rather widely accepted in the literature – see, i.a., Roman Tokarczyk, *Etyka prawnicza* (Warsaw: C.H.Beck, 2011), 23–35.

<sup>2</sup> Hartman and Woleński provide a good overview of specific fundamental ethical problems in Jan Hartman and Jan Woleński, *Wiedza o etyce* (Bielsko-Biała: ParkEdukacja, 2009), 241–348.

<sup>3</sup> Those interested in the history of ethics from ancient times to the present can refer to the classic study – Alasdair MacIntyre, *Krótką historia etyki*, translated by Adam Chmielewski (Warsaw: Wydawnictwo Naukowe PWN, 2000).

However, some simplified and potentially misleading intuitions of colloquial language need to be eliminated at the very outset. The Polish dictionary indicates two basic meanings of “ethics”: “1) the general principles and moral norms adopted in a given epoch and social community, morality; 2) study of morality dealing with description, analysis and explanation of actually existing morality and establishing directives of moral conduct.”<sup>4</sup> In the first sense, ethics is essentially equated with morality. Indeed, in everyday language this can be seen especially in the adjectival form – the term “ethical” in various contexts often simply means the same as “moral.” However, when we compare the nouns “morality” and “ethics,” we get two different meanings. A relevant example is given by Jan Hartman and Jan Woleński: “Already in ancient times, ethics was understood as a reflection on morality, especially as the philosophy of morality. This suggests that the nouns “morality” and “ethics” have different meanings. Consider, however, the adjectives “ethical” and “moral.” In contexts, moral code and the code of ethics mean almost the same, although medical morality and medical ethics certainly do not express the same. When we say that medical morality is such and such, we generally mean how doctors actually act [...], and when we consider medical ethics, we are interested in indications of how physicians should act [...]. Let us make such a clarification: morality is a social fact based on that people act (because of moral good and evil) in a certain way, and ethics is a set of indications on how to act.”<sup>5</sup>

For the purposes of this study, however, it is definitely and exclusively about the second of the dictionary meanings listed above – ethics as a study of morality. Though the dictionary definition quoted above may turn out to be too general for our needs and may need to be somewhat extended and clarified, it has certain sufficient cognitive and ordering qualities. First, it clearly defines the primary subject of ethics – “all moral principles and norms”; second, it establishes two basic ways of ethical narrative – “description, analysis and explanation of actually existing morality” (descriptive ethics) and “establishing directives of moral conduct” (normative ethics).

Determining a specific meaning of ethics different from morality does not imply, of course, that ethics thus understood is a homogeneous phenomenon, or especially that, in the history of ethics from antiquity to the present, some unified way of presenting and solving ethical problems has been developed. On the contrary, we are dealing with a very broad, perhaps almost unlimited spectrum.<sup>6</sup>

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<sup>4</sup> Stanisław Dubisz, ed., *Uniwersalny słownik języka polskiego*, vol. A–J (Warsaw: Wydawnictwo Naukowe PWN, 2008), 858.

<sup>5</sup> Hartman and Woleński, *Wiedza*, 19.

<sup>6</sup> See entry “Etyka, problemy,” in Ted Honderich, ed., *Encyklopedia filozofii*, vol. I A–K, translated by J. Łoziński (Poznań: Zysk i S-ka, 1998), 221–224.

In this substantive and methodological richness, certain ideas that may be essential from the point of view of ethical knowledge useful in legal ethics can be distinguished. They include deontology (ethics of principles/duties), consequentialism (ethics of effects) and aretology (ethics of virtue). These three fundamental (in simple terms) types of ethical reflection are in a sense competitive and oppose each other, but modern academia tries to reduce the tension between them and come up with various hybrid forms, since in pure form each of these types has its pros and cons, its weaknesses and strengths.<sup>7</sup> Understanding their essence *in genere* seems necessary from the point of view of understanding the function of legal ethics *in specie*, because each of them can be applied (and practically is) in defining the ethos of the legal profession. Yet, since lawyers only resort to what has been developed in the long history of ethics, the floor is given to philosophers.

Deontology (from Greek *dei* “it is necessary” and *deon* “duty”) is defined primarily as the ethics of obligation, but from a certain point of view it can also be considered as the ethics of principles. There is no contradiction in this – after all, an obligation to conduct oneself in a particular way is nothing else than an obligation to follow a specific principle.<sup>8</sup> There are various justifications of deontology – it may be seen from the perspective of the agent carrying out certain actions (agent-centered deontology) or the perspective of the subject affected by these actions (victim-centered deontology), but views neutral as to the subject (agent-neutral deontology) are also possible.<sup>9</sup> Either way, deontology primarily has a non-consequentialist dimension. In other words, certain morally relevant acts should be taken or avoided regardless of the consequences that may result from this act or omission. The decisive factor is only that something is morally good or morally bad *per se*, regardless of the effects of our choices. It is easy to notice that deontology can provide a good basis for all ethical codifications. It allows us to establish a more or less complete list of acts that are morally desirable or morally reprehensible. Thus, according to the simplest definition, deontology is “normative ethics due to a specific field of human activity,” while deontologism is “a current in ethics maintaining that morality is the domain of moral law and of the obligation to follow it; the moral value of an act depends on whether it fulfills that obligation.”<sup>10</sup>

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<sup>7</sup> See Krzysztof Saja, *Etyka normatywna. Między konsekwencjalizmem a deontologią* (Kraków: Universitas, 2015).

<sup>8</sup> However, in philosophical literature, ethics of principles is sometimes distinguished from deontology – see i.a. Saja, *Etyka normatywna*, p. 31ff. and 97ff.

<sup>9</sup> *Ibid.*, 110.

<sup>10</sup> Hartman and Woleński, *Wiedza*, 434; see also entry “deontologizm,” in Józef Herbut (ed.), *Leksykon filozofii klasycznej* (Lublin: Towarzystwo Naukowe KUL, 1997), 107ff.

While deontology abstracts from the effects of our moral choices, consequentialism, sometimes directly identified with utilitarianism,<sup>11</sup> concentrates on them, because “the moral value of an act is measured by its consequences.”<sup>12</sup> Although consequentialism as an ethical theory has a history as long as deontology, its name is relatively young, having being coined by British philosopher Gertrude Elizabeth Margaret Anscombe in 1958.<sup>13</sup> Since it is hard to determine and predict all possible situational outcomes of our moral choices, consequentialism does not have such codification possibilities as deontology, and therefore is often defined not in a positive but negative way: “a view opposing both the view that the source of the value of an act can be some advantages of the character of the subject of action (courage, justice, restraint, etc.), as well as the view that the value of an act may be inherent, belonging to it as such, e.g. as an act of truthfulness or keeping a promise.”<sup>14</sup>

This negatively formulated definition leads us to the grounds of the third tradition of ethical reflection, as it is clear that consequentialism can be contrasted not only with the immanent features of an act, but also with the immanent features of a person as the perpetrator of this act. The opposite of consequentialism is non-consequentialism, but the latter may concentrate on both the object (deontology) and the subject (ethics of virtue).<sup>15</sup> Anscombe’s article was of paramount importance for contemporary virtue ethics. The British philosopher pointed out that, for centuries, the fundamental ethical and metaethical dispute has been along the line of deontologism versus consequentialism – and yet in the history of philosophy a third solution can be found – the Aristotelian ethics of virtues, with which a person, as a subject of moral actions, should be equipped. This reclaiming of the Aristotelian tradition caused the emergence of a third current in modern ethics – aretology as a broad understanding of virtues and of the study of moral virtues.

Naturally, the question arises as to which of these three types of presentation of moral problems and ways of solving them is most useful for legal ethics. It seems, however, that legal ethics is above all normative ethics of a deontological nature. As a result, it is no coincidence that legal ethics is a domain extensively codified in various types of documents adopted within particular legal

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<sup>11</sup> However, it seems that consequentialism is a broader concept, and utilitarianism is only one possible form of consequentialism – see the entry “consequentialism,” in Honderich, *Encyklopedia filozofii*, 43.

<sup>12</sup> Hartman and Woleński, *Wiedza*, 439.

<sup>13</sup> Gertrude Elisabeth Margaret Anscombe, “Modern Moral Philosophy,” *Philosophy* 1958, vol. 33, No. 124: 1–19.

<sup>14</sup> Entry “konsekwencjalizm,” in *Oksfordzki słownik filozoficzny*, Simon Blackburn, translated by Cezary Cieśliński et. al. and edited by Jan Woleński (Warsaw: Książka i Wiedza, 2004), 195ff.

<sup>15</sup> Saja, *Etyka normatywna*, 97.

professions. This, of course, does not imply that consequentialism is of no significance in this area – it may prove to be of some limited use in those cases referred to in the philosophy of law as hard cases.<sup>16</sup> In contemporary jurisprudence, increasing attention is given to the ethics of virtues. This can be evidenced by the origin of a new philosophical and legal current – virtue jurisprudence.<sup>17</sup> It is relatively young, only a dozen or so years old, but perhaps the future within legal ethics, especially judicial ethics, belongs to it.

However, it cannot be excluded that, within the framework of trends prevailing in contemporary general ethics, legal ethics – due to its specificity – will become increasingly based on hybrid ethical theories<sup>18</sup> in the sense mentioned above. Legal ethics should not abstract from a conciliatory tone and attempts to find a compromise between deontology, consequentialism and aretology – attempts at which can be seen in contemporary philosophy.<sup>19</sup>

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<sup>16</sup> For more on this topic, see Jerzy Zajadło, *Po co prawnikom filozofia prawa?* (Warsaw: Wolters Kluwer Polska, 2008).

<sup>17</sup> See i.a. Lawrence B. Solum, “Virtue Jurisprudence: A Virtue-Centered Theory of Judging,” *Metaphilosophy* 2003, vol. 34, No. 1–2: 178–213.

<sup>18</sup> See Saja, *Etyka normatywna*, 215–288.

<sup>19</sup> See Joanna Górnicka-Kalinowska, “Konsekwencjalizm,” in *Panorama współczesnej filozofii*, eds. Jacek Hołówka and Bogdan Dziobkowski (Warsaw: Wydawnictwo Naukowe PWN, 2016), 135–150.





## Chapter 2. Principal branches of ethics

*Oktawian Nawrot*

A reflection on ethics may encounter serious difficulty right at the very beginning. What is meant here are not some complicated issues concerning human conduct, e.g. in circumstances where either choice inevitably involves a greater or lesser evil – as in the well-known trolley dilemma, where we have to decide about pulling the lever and redirecting the trolley to the track with one man tied up, thus, saving the lives of five people lying tied up on the original track. It is about something completely different, and at the same time, fundamental to this chapter, namely defining ethics as such. Seemingly, the matter is uncomplicated and even banal, and thus, not worth thinking about. One would like to consider this based on the example of Father Benedykt Chmielowski, author of one of the first Polish encyclopedias, *Nowe Ateny*, who, in the definition of a horse, wrote “A horse is as everyone can see.”<sup>1</sup> Indeed, ethics seems something obvious, something that we deal with every day, and hence, not requiring abstract reflection. However, when we begin to think about the meaning of the word “ethics” seriously, it soon turns out that we face a problem similar to that of St. Augustine looking for the answer to the question of time, and ours may resemble the one given by the sage “If no one asks me, I know; if I want to explain it to a questioner, I do not know.”<sup>2</sup>

The above paradox becomes more intriguing when we realise that ethics “bombards” us every day from the front pages of newspapers, television programmes, and websites. After all, nothing sells better than information that stimulates/irritates/shocks our ethical sense. A judge who does not pay alimony, a doctor disconnecting a child from life support equipment, a scientist falsifying the results of research on drug effectiveness – it is disgusting, it is outrageous, but... it sells well. As Jacqueline Russ observes in her book *La*

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<sup>1</sup> Benedykt Chmielowski, *Nowe Ateny* (Lviv, 1745), 475 (scan of the first edition available at [https://polona.pl/item/nowe-ateny-albo-akademia-wszelkiey-scyencyi-pelna-na-rozne-tytuly-iak-na-classe\\_s,Njc2NTc5ODM/2/#info:metadata](https://polona.pl/item/nowe-ateny-albo-akademia-wszelkiey-scyencyi-pelna-na-rozne-tytuly-iak-na-classe_s,Njc2NTc5ODM/2/#info:metadata)).

<sup>2</sup> St. Augustine, *Wyznania*, translated by Zygmunt Kubiak (Kraków: Znak, 2000), Book XI, Item 14.

*Pensée Ethique Contemporaine*, “current years are a time of ethical renewal, the ‘era of morality’, as the banner of axiological values turns out to be the ultimate point of reference for our developed democratic societies.”<sup>3</sup> Regardless of this, solutions proposed by the media, experts, and authorities of various sorts very often fail to convince us. The aforementioned doctor disconnecting a child from life support apparatus upon the conclusion that the degree of brain damage of the young patient justifies sufficiently the decision that actions which would be taken otherwise are not for the good of the child, but instead prolong not life but agony, will meet both approval and criticism of many observers. These observers – in the majority recipients of simplified media information – will refer to their morality, to their sense of what is good and bad, without thinking about the reasons behind the formulated assessments. In particular, there will be no reflection on the systems of values and norms in which their assessments are integrated, from which these assessments follow, and thus, there will be no reflection on what justifies them – makes them “valid.”

The above description gradually outlines the phenomenon of ethics. People behave in different ways, which can be judged in terms of good-bad, just-unjust, right-wrong, etc. When someone destroys another person’s car, slanders someone behind their back, does not keep their word, or abandons their sick partner, they may face disapproval of others, and even sanctions such as ostracism from the group they belong to. This is because the action of the “condemned” person violated a specific norm, which in effect was aimed at protecting some value recognised in a given group, e.g. ownership, good name, or truth. Moreover, it is unsurprising to us. Our actions are subject to assessment and evaluation. From early childhood, we are taught what we are allowed and what we are not allowed to do. Some behaviour is presented as positive, and some as negative. We learn to distinguish them, which is facilitated by the already mentioned, often complex systems of norms. These norms usually take the form: “you should do x,” “you should not do y,” “it is necessary to do x,” “y is not to be done,” or “x is good,” “y is bad.” For the purpose of their internalisation, i.e. recognition of a norm as one’s own, identification with it, on the one hand some norms – as mentioned above – are subject to certain sanctions, e.g. rejection by the group, negative reactions, stigmatisation. On the other hand, implementation of other norms entails rewards: recognition, universal approval, respect, growth in importance.<sup>4</sup>

The phenomenon described above is morality, i.e. a collection of social facts which boil down to statements that people act in one way or another because

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<sup>3</sup> Jacqueline Russ, *Współczesna myśl etyczna*, translated by Agnieszka Kuryś (Warsaw: Instytut Wydawniczy PAX, 2006), 5.

<sup>4</sup> See Hartman and Woleński, *Wiedza*, 17–18.

of moral good or evil.<sup>5</sup> If we now reflected on this phenomenon, in particular on its foundations, we would move to the sphere of ethics. This is precisely how ancient thinkers undertaking first reflection on morality approached ethics. Thus, ethics primarily sets itself the goal of “understanding” the phenomenon of morality by referring to the conduct of individuals that is important from a moral point of view, attempts to “comprehend” them, to understand the values underlying them, to examine the accompanying assumptions about man and the world. Ultimately, ethics, striving to understand the phenomenon of morality, of decent behaviour of individuals, looks for its most basic foundations, or – in other words – the first principles, the source of moral duties. Hence, when undertaking ethical reflection, first we enter a specific meta-level of morality. A simple analogy can help understand this – a particular work of art is different from a theory of art. Good and bad conduct is different from good and evil as such. Then, after understanding these phenomena, the construction of a system of moral norms that regulate human behaviour in the individual and social perspectives may begin. Therefore, ethics has the ambition to set goals of human action, moral values proper to them, and in consequence, to formulate imperatives, or moral laws.<sup>6</sup>

The above description makes it possible to distinguish two basic divisions of ethics, i.e. descriptive and normative ethics. The former, also called the science of morality, as its name indicates, focuses on description, analysis, and then explanation of moral phenomena. What is examined within this branch of ethics are primarily the widespread (in a given place and time) ways of conduct of individuals belonging to specific groups, reasons behind the actions that belong to the sphere of morality, factors influencing their modification, relationships between the system of moral norms and other systems, differences between various moral systems, effects of adopting specific models of behaviour by individuals, motives behind individuals’ behaviour, the nature of moral experiences, moral development of an individual, etc.<sup>7</sup>

Traditionally, research undertaken in descriptive ethics is divided into three groups: sociological research (sociology of morality), psychological research (psychology of morality) and historical research (history of morality).<sup>8</sup>

The starting point in sociological research is the assumption that morality is a social fact. Specific practices and norms related to them, are thus, the

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<sup>5</sup> See Vasil Gluchman, *Morality: Reasoning on Different Approaches* (Amsterdam-New York: Rodopi, 2013), 12–14.

<sup>6</sup> See Tadeusz Ślipko, *Zarys etyki ogólnej* (Kraków: Wydawnictwo WAM, 2002), 22–38.

<sup>7</sup> See Nora Hämäläinen, *Descriptive Ethics. What does Moral Philosophy Know about Morality?* (New York: Palgrave Macmillan, 2016), 1–6.

<sup>8</sup> Tadeusz Brzeziński, *Etyka lekarska* (Warsaw: PZWL Wydawnictwo Lekarskie, 2002), 4–5.

product of a certain community – they are created, applied, and modified within it. Hence, a given act in itself, in order to qualify as good or bad, must be analysed in a social context. Consequently, moral is what a given society at a specific place and time considers to be moral (conventionalism, also called social decretalism). Moreover, under the above assumption, morality does not exist outside society.

Linking morality with society subsequently leads to the recognition that morality, like society, is a phenomenon changing in time. Its final form is the effect of numerous factors: environmental (e.g. specific climate and access to natural resources have been determining economy for centuries, which in turn influenced the system of social relations, which then affected the ways and norms of conduct binding individuals), biological (sex, physical development, race – often shape the rules of conduct for societies and individuals belonging to specific social groups), demographic (population density, demographic changes, population mean age, sex proportion in society), political (political system), economic and technological development, access to information sources, and individuals' mobility, etc.<sup>9</sup>

Psychological research conducted within descriptive ethics concentrates on the issues of mental phenomena accompanying moral actions. In particular, analysis includes motives of these actions, natural senses conditioning specific behaviour, moral experiences (sense of duty sense of obligation, pangs of conscience, etc.), mental states assessed in moral categories (envy, contempt, friendship, love, etc.), moral development of an individual, role-models, moral pathology (moral blindness, extreme Machiavellianism, etc.). Typical kinds of questions formulated within psychology of morality are: Do people act egoistically? Are these kinds of behaviour common? Are people psychologically inclined to certain types of behaviour?<sup>10</sup>

The third of the aforementioned groups of study issues undertaken within descriptive ethics is history of morality. Historical research primarily concerns problems of changeability of moral convictions, attitudes, assessments, and norms in time. Thus, analysis covers factors that have influenced transformations in the moral sphere, as well as mechanisms of these transformations. Moral convictions that were universal at a certain stage in history are described and often related to non-moral elements: the entirety of culture, beliefs, geopolitical reality of a given community, social system, etc.

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<sup>9</sup> For a broad discussion on sociology of morality, see, for example: Maria Ossowska, *Socjologia moralności. Zarys zagadnień* (Warsaw: Wydawnictwo Naukowe PWN, 2005); Steven Hitlin and Stephen Vaisey, *Handbook of the Sociology of Morality* (New York: Springer, 2010).

<sup>10</sup> For more on moral psychology, see for example: Benjamin G. Voyer and Tor Tarantola, *Moral Psychology. A Multidisciplinary Guide* (no data: Springer, 2017).

It should be noted that some researchers combine historical research with broadly understood sociology of morality, or may also speak in this context about the history of sociology of morality. Since sociology of morality essentially focuses on analysis of morality as a social fact in a given place and time, nothing prevents making the morality of a particular group in the past the subject of research. Yet, if the subject of study are the psychological experiences related to moral actions of a late individual, carried out, e.g. on the basis of preserved diaries, it turns out we will enter the domain of psychology of morality or its history.

While explaining the above remarks into the sphere of morally significant actions of legal practitioners, it should be emphasised that descriptive ethics allows, above all, one to capture and understand the phenomenon of the mentioned actions. In addition to identifying the behaviour of representatives of legal professions belonging to the sphere of morality, descriptive ethics makes it possible to reconstruct the genesis of this behaviour, the reasons behind it, the relationships between the system of moral norms and other normative systems, in particular the system of legal norms, circumstances affecting modification of this behaviour, mechanisms of adopting patterns of conduct, lawyer's moral development model, etc.

The chief task of the second of the distinguished branches of ethics (i.e. normative ethics) is – in accordance with the preliminary remarks – to formulate norms of conduct, i.e. rules, recommendations and guidelines on how people should behave. These norms often take the form of entire systems, deontologies (Greek: *deon* – what is mandatory, necessary, proper), regulating the behaviour of individuals belonging to specific, usually professional, groups, e.g. medical, journalist, or – of particular interest to us – legal deontology.

It should be emphasised that normative ethics, focusing on the formulation of norms of conduct – that is on phrases such as “should” and “have to” – does not describe reality, i.e. “what is,” although understanding “what is,” i.e. morality, is its natural starting point. By its nature, it is directed towards the future, towards what (does not yet) exist. For example, the obligation imposed on lawyers to perform professional activities according to their best will and knowledge in fact says nothing about the current behaviour of a given lawyer.

Naturally, the above remarks do not lead to the conclusion that normative ethics, or strictly speaking normative judgments formulated within it – e.g. orders, prohibitions – are of no real significance, or concern a sphere completely independent of reality. Probably every healthy person has had some “experiences of moral duty,” namely states of consciousness in which they experience the existence of a kind of imperative, conviction or at least recognition of the

properties of a particular behaviour.<sup>11</sup> For example, a lawyer who has accepted a commission for carrying out specific legal actions experiences “cognisance,” or even a strong imperative to perform them with due diligence and speed.

Introducing the “experience of moral duty” to the sphere of universal and certain experience of an individual raises questions about its source. For centuries, the existence of a direct relationship between moral good (what is considered good – “x is good”) and relevant norm of behaviour (“one has to do x,” “one has to be x,” “one has to protect x”) was taken for granted. In the 18th century, Immanuel Kant led to a breakthrough in understanding moral duty. Stating that one should act in accordance with such a principle, which at the same time they may want to become a universal law, the philosopher from Königsberg did not point to any specific good. Moreover, he did not provide direct guidance on what to do and how. Those were ethical who in their actions simply followed the categorical imperative formulated above. The direction indicated by Kant was adopted by ethical and legal positivism in the 19th century. Its representatives claimed that moral value of an act should be measured by the extent of compliance of behaviour of a person to whom a moral or legal norm was addressed with its content.

Almost simultaneously with the crystallisation of ethical and legal positivism, which expresses the shift from the state of original balance between moral good in itself and duty towards the latter, a trend has appeared that proclaimed the possibility of constructing morality without duty. According to its representatives, the value of moral action is not determined by conformity to specific rules of conduct, usually “encouraging” this compliance with specific sanctions, but internal stimuli – direct experience of values. In other words, truly moral is the only action undertaken autonomously by an individual in order to realise moral value because of its perfection.

Without delving into the history of ethical thought, it should be emphasised that the remarks regarding the source of the “experience of moral duty” bring new issues into the field of normative ethics, which – according to the definition given at the beginning – focuses on the formulation of norms of conduct, for normative ethics, apart from creating/defining duties, also deals with their justification and analysis. However, this analysis goes beyond the problems of norms by including also assessments and other ethical statements. For example, in searching for a source that allows the reconstruction of the content of a specific norm of conduct, one can indicate two basic sources: authority (legal text, legislator, etc.) or the goal of action (compensation, punishment, retaliation,

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<sup>11</sup> Alojzy Drożdż, “Powinność moralna,” *Śląskie Studia Historyczno-Teologiczne* 2010, No. 43(2): 302–316.

implementation of the idea of justice, etc.). In the first case, the ethical system is usually built of imperative, essentially unchanging rules of conduct and takes the form of codes. In the second case, specific duties are determined in a very general way by the goal to be achieved, and their final content is influenced by a number of circumstances in which the action is taken. For this reason, it is impossible to define a given type of action in terms of good or bad, because the same action taken in different circumstances can lead to different effects with different moral value. Similarly, diametrically opposed ways of action can lead to the same goal.

Naturally, the multitude of assessments of specific actions does not translate into the possibility of *a priori* discrediting the above positions. Both have pros and cons. The advantage of the first of these is a theoretically a high degree of certainty as to the content of the norm that characterises due, and therefore, also moral action. As regards weaknesses, one should note the possibility of excessive formalism, which reduces the individual's action to uncritical submission to a specific authority. In the extreme version, this view may lead to recognising as highly moral an act leading to the most abominable crime, but committed in strict accordance with the norm. In the second approach, what should be counted as its advantage is stressing the value of goals behind specific actions, as well as the autonomy of an individual in choosing the methods of their implementation. For example, imposing on a lawyer, obliged to perform legal actions with due diligence and speed, specific methods of conduct, could indeed lead to a situation in which they would not function as effectively and reliably as they could. Conversely, excessive focus on the goal may lead to recognising as moral those means which, from a different perspective, would undoubtedly be considered ignoble, because the goal – contrary to what Machiavelli desired – does not necessarily justify the means. The abovementioned multiplicity of problems analysed as part of normative ethics means that this field is often identified with ethics as such.

To supplement the picture of ethics and its divisions outlined above, it should be mentioned that, apart from normative and descriptive ethics, a third division, namely meta-ethics, is distinguished. The beginnings of meta-ethical reflection are associated with British philosopher George Edward Moore, co-creator of analytical philosophy, and his work *Principia Ethica* (Principles of Ethics), in which, upon considering the subject of ethics, Moore analysed three fundamental ethical questions: 1. What particular things are good? 2. What kind of things are good? 3. How do you understand “goodness”? Answers to the above questions determined the scope of respective ethical disciplines. The first question is the domain of casuistry, which focuses on analysing specific, individual cases, e.g. was disconnecting Charlie Gard from the life support



apparatus a moral act? The answers to the second question determine the scope of normative ethics, which formulates general and abstract norms of conduct and provides reasons for them. The third question points to the central problem of meta-ethics. By answering it, i.e. considering the connotation and denotation of the term “goodness,” no directives of conduct are formulated, no concrete moral problem is solved, in fact, the language used by ethics is being analysed.<sup>12</sup>

The research area outlined above – the language of ethics – remains one of the central subjects of meta-ethics to this day. How should particular ethical terms (evil, good, justice, righteousness) be understood? What function do they perform in language (descriptive, suggestive, performative, expressive)? Can ethical judgments be considered in terms of truth and falsehood? If so, what is the criterion of their veracity? Where should one seek a sufficient reason for them? Departing from the analysis of ethical concepts themselves, one can also pose questions typical of metaphysics, i.e., what are values? What is the essence of values? How do they exist? Do values exist objectively, or are they a kind of projections imposed by individuals onto reality?

Meta-ethics analyses systems of normative ethics, their types, structures, functions, as well as the relations between normative and descriptive ethics. Typical meta-ethical issues, in fine, include the problems of definition of ethics, its sources, methods, and relations to other scientific disciplines.<sup>13</sup>

Explaining the meaning of the term “meta-ethics,” it is also worth referring to the word which was a kind of model for it, namely “metaphysics.” The latter term is the title of Aristotle’s work devoted to the most fundamental and abstract issues – the first principles, causes, and general theory of reality. When, in the first century BC, Andronicus of Rhodes was arranging Stagirite’s writings, this work was placed after writings devoted to physics, i.e. the natural world. This is where the name “metaphysics” came from – *tá metá tá physiká* (the [writings] after the *physics*). So the most basic and abstract issues mentioned are the nature of natural world and its elements – their existence and essence. Analogously, meta-ethics is reflection on ethics and its elements – their essence and existence.<sup>14</sup>

Although meta-ethical issues may seem extremely abstract, they are in fact of paramount importance for all ethical discourse. How individual ethical terms are understood, e.g. good or justice, often directly translates into moral assessments and norms that are formulated, as well as the possibility of

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<sup>12</sup> Hartman and Woleński, *Wiedza*, 23–25.

<sup>13</sup> See Jakub Gorczyca, *Zarys etyki fundamentalnej. Być dla drugiego* (Kraków: Wydawnictwo WAM, 2014), 15–16.

<sup>14</sup> Hartman and Woleński, *Wiedza*, 21–23.

reaching a consensus in ethical discourse. Similarly, and fundamental for ethical discourse, is the status of ethical judgments. Recognition that these judgments can be considered in terms of truth and falsity leads to the statement that certain moral actions are objectively good or bad and each individual may reach the appropriate conclusion. Whereas recognition that ethical judgments are only an expression of subjective preferences, assessments, or ordinary discretion of an individual means that reaching a consensus in ethical discourse becomes at least extremely difficult. A discussion of ethical issues then resembles a discussion about tastes, and it has been known for centuries that *de gustibus non est disputandum*.

Finally, it should be mentioned that some authors, including Polish-speaking ones, classify meta-ethics not as one of the core divisions of ethics, as it is done at the beginning of this description, but as part of descriptive ethics. However, occupying a special place within it.<sup>15</sup> This kind of dividing ethics largely corresponds with the original division of ethical issues proposed by Moore.

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<sup>15</sup> See *ibid.*, 20.

[Przejdź do księgarni →](#)